

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**ITEM 16
ATTACHMENT 22**

**JUNE 21, 2002 MEMORANDUM FROM MICHAEL LEVY
ENTITLED
“TMDLS FOR CONDITION-BASED IMPAIRMENTS”**

CHOLLAS CREEK DIAZINON TOTAL MAXIMUM DAILY LOAD

August 14, 2002



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Secretary for
Environmental
Protection

State Water Resources Control Board

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Governor

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TO: TMDL Roundtable,
c/o Thomas Mumley, San Francisco Bay RWQCB
Statewide TMDL Manager

FROM: /s/
Michael J. Levy
Staff Counsel
OFFICE OF CHIEF COUNSEL

DATE: June 21, 2002

SUBJECT: TMDLS FOR CONDITION-BASED IMPAIRMENTS

The TMDL Roundtable has asked about the legal status of waters on the 303(d) list that are designated as impaired for conditions rather than pollutants. In short, when waters are listed as impaired for conditions that are caused by pollutants, the Regional Water Quality Control Boards must establish a TMDL for those pollutants that cause or contribute to the impairing condition.

Two subdivisions of section 303(d) of the Clean Water Act¹ are implicated in this analysis. Section 303(d), subdivision (1)(A), requires each state to identify the waters within its jurisdiction that are not attaining water-quality standards. (33 U.S.C. § 1313(d)(1)(A).) The result of that process is commonly known as the 303(d) list. The federal regulations additionally require the 303(d) list to include an identification of the pollutants causing or expected to cause violations of standards. (40 C.F.R. § 130.7(b)(4).)

For the waters on the 303(d) list, section 303(d), subdivision (1)(C), requires the state to develop TMDLs for the pollutants that are impairing those waters. (33 U.S.C. § 1313(d)(1)(C).) In many instances, however, waters on the 303(d) list are not identified as impaired by a specific pollutant, but by conditions that are caused in whole or in part by pollutants. Examples of these stressors include accelerated eutrophication (typically associated with excessive nutrients), toxicity

¹ All references herein to any "section" are to the federal Clean Water Act, and references to "subdivision" are to specific subdivisions of section 303(d) of the Clean Water Act.

TMDL Roundtable,
c/o Thomas Mumley,
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- 3 -

June 21, 2002

(miscellaneous toxic constituents), and temperature (thermal discharges and sediment). Subdivision (1)(A) does not prohibit identifying waters as impaired by such conditions, and the United States Environmental Protection Agency has approved this approach, for example, by approving the 1998 303(d) list. Such listings, however, do not impact the state's obligation under subdivision (1)(C) to develop TMDLs for the pollutants impairing those waters. Accordingly, where waters are listed as impaired for conditions commonly associated with pollutants, the Regional Water Quality Control Boards must identify the pollutants underlying or contributing to the conditions, and either establish TMDLs for those pollutants, or establish TMDLs that otherwise correct the conditions leading to the impairment. (33 U.S.C. § 1313(d)(1)(C).)

Should you have any questions about this memorandum, feel free to contact me at (916) 341-5193 or mlevy@swrcb.ca.gov.

TMDL Roundtable,
c/o Thomas Mumley,
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- 4 -

June 21, 2002

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Item 16, Attachment 22, August 14, 2002
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page 5 of 5

TMDL Roundtable,
c/o Thomas Mumley,
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- 5 -

June 21, 2002

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